



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12-375; FCC 13-113]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks public comment on options to reform the inmate calling service (ICS) market. Possible new rules could affect all ICS providers, including small entities. In proposing these reforms, the Commission seeks comment on various options discussed and additional options for reforming the ICS market.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by WC Docket No. 12-375 by any of the following methods:

- Federal Communications Commission's Web Site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520 or lynne.engledow@fcc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See, [Electronic Filing of Documents in Rulemaking Proceedings](#), 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This is a summary of the Commission's Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 12-375, FCC 13-113, dated on August 9, 2013 and released on September 26, 2013. The full text of this document is available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY-A257, Washington, DC, 20554. The full text of this document may be downloaded at the following Internet address: <http://www.fcc.gov/documents/----->. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington DC, 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY). This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

The proceeding this Further Notice of Proposed Rulemaking (FNPRM) initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda

or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with sec. 1.1206(b). In proceedings governed by sec. 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

I. FURTHER NOTICE OF PROPOSED RULEMAKING

1. We seek comment on additional measures we could take to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest, the Commission's authority to implement these measures, and the pros and cons of each measure. We believe additional action on ICS will help maintain familial contacts stressed by confinement and will better serve inmates with special needs while still ensuring the critical security needs of correctional facilities of various sizes.

Specifically, we seek comment on:

- Reforming intrastate ICS rates and practices;
- ICS for the deaf and hard of hearing community;
- Further reforms of interstate and intrastate ICS rates;
- Cost recovery in connection with the provision of ICS;
- Ensuring that charges ancillary to the provision of ICS are cost-based;
- ICS call blocking;
- Ways to foster competition to reduce rates within correctional facilities; and
- Quality of service for ICS.

A. Reforming Intrastate ICS

2. In this section, we seek comment on reforming intrastate ICS rates and practices to ensure that consumers across the country can benefit from a fair, affordable ICS rate framework that encourages inmates to stay connected with friends and family. As discussed below, we believe that intrastate reform is necessary and that the Commission has the authority to reform intrastate ICS rates. We seek comment on these issues.

1. Need for Intrastate Rate Reform

3. We commend states that have undertaken ICS reform. In particular, we encourage more states to eliminate site commissions, adopt rate caps, disallow or reduce per-call charges, or take other steps to reform ICS rates. The reforms adopted in the Order are structured in a manner to encourage other states to undertake reform and to give states sufficient flexibility to structure reforms in a manner that achieves just and reasonable rates. Even so, it is unlikely that all 50 states, Washington D.C., and the U.S. territories will all engage in ICS reform in the near term. Indeed, several comments encourage the Commission to reform intrastate ICS rates as well as interstate ICS rates. As a result, if the Commission does not take action to reform unfair intrastate ICS rates, the unreasonably high rates will continue, many families will remain disconnected, and the available societal benefits will not be realized.

4. The Order explains the legal and policy reasons why the Commission needed to adopt reforms of interstate ICS rates. We believe the same legal and policy concerns identified in the Order apply equally with regard to high intrastate rates. For example, lower ICS rates result in increased communications between incarcerated parents and their children. Additionally, the record indicates that the lack of regular contact between incarcerated parents and their children is linked to truancy, homelessness, depression, aggression, and poor classroom performance. Further, studies have demonstrated that increased contact with families during incarceration leads to lower rates of recidivism, and associated lower taxpayer costs. Indeed, the record indicates that a significant number of ICS calls are intrastate, highlighting the need for reform of intrastate rates. We tentatively conclude and seek

comment on the conclusion that intrastate ICS rate reform will yield these and other societal benefits in the same manner as interstate ICS rate reform.

5. As discussed in the Order, the variance in interstate ICS rates is significant (from an effective rate of \$0.043 per minute in New Mexico to \$0.89 per minute with a \$3.95 call set up charge in Georgia) and that such variance is unlikely to be based on the ICS providers' costs. In the Order, we conclude that competition and market forces have failed to ensure just, reasonable, and fair interstate ICS rates, and, for the same reasons, we tentatively conclude that the same failure has occurred for intrastate ICS rates as well. We invite comment on this analysis. Where states have failed to ensure just, reasonable, and fair ICS rates for intrastate services, is the Commission compelled to take action to ensure just, reasonable, and fair rates under section 276? Should the Commission only take action to reform intrastate ICS rates in states that have not reformed rates to levels that are at or below our interim safe harbor adopted above? Would doing so permit other states to adopt reforms?

6. For the same reasons we found that site commission payments are not part of the cost of providing interstate ICS, we tentatively conclude that site commissions should not be recoverable through intrastate rates, and seek comment on this tentative conclusion. Where states have prohibited site commission payments, we seek comment on whether the resulting intrastate ICS rates are just and reasonable and whether an average of such rates would provide a reasonable safe harbor for fair intrastate ICS rates.

7. The record also reflects that differing interstate, intrastate long distance and local rates have encouraged the use of technology to reduce the costs on families. In practice, call recipients obtain telephone numbers associated with a geographic area (either local or long distance) that corresponds to the lowest ICS rate for a particular correctional facility. Will the cost-based rates required by the Order create a market-based solution for driving intrastate rates to cost-based levels absent further regulatory actions? Also, does the existence of uniform ICS rates evidence ICS providers' ability to provide

intrastate and interstate calls at the same rate level, and therefore support Commission action to ensure such uniformity among interstate and intrastate ICS rates?

2. Legal Authority

8. Several commenters in this proceeding have argued that the Commission has authority to regulate rates for intrastate ICS under section 276 of the Act, which directs the Commission to regulate the rates for intrastate and interstate payphone services and defines such services to include “the provision of inmate telephone service in correctional institutions, and any ancillary services.” We agree and tentatively conclude that section 276 affords the Commission broad discretion to regulate intrastate ICS rates and practices that deny fair compensation, and to preempt inconsistent state requirements. We seek comment on this tentative conclusion and related issues below.

9. While the Commission has broad jurisdiction over interstate telecommunications services, its authority over intrastate telecommunications is, except as otherwise provided by Congress, generally limited by section 2(b) of the Act, which states that “nothing in this Act shall . . . give the Commission jurisdiction with respect to . . . intrastate communication service by wire or radio.” As the Supreme Court has held, however, section 2(b) has no effect where the Communications Act, by its terms, unambiguously applies to intrastate services. That is the case here. Section 276(b)(1) expressly authorizes – indeed, instructs – the Commission to regulate intrastate payphone services:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that . . . establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and

telecommunications relay service calls for hearing disabled individuals
shall not be subject to such compensation

Furthermore, section 276(c) provides that “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.”

10. We also believe that our authority in this regard finds support in judicial precedent. In Illinois Public Telecommunications Association v. FCC, the D.C. Circuit upheld against jurisdictional challenge the Commission’s authority to regulate, and to preempt inconsistent state regulation of, the local coin rate for payphones:

It is undisputed that local coin calls are among the intrastate calls for which payphone operators must be “fairly compensated;” the only question is whether in section 276 the Congress gave the Commission the authority to set local coin call rates in order to achieve that goal. We conclude that it did.

Thus, we tentatively conclude these statutory provisions and associated case law permit the Commission to regulate intrastate ICS provider compensation, including end-user rates. We seek comment on this conclusion.

11. We also seek comment on whether and how the Commission’s potential regulation of intrastate ICS pursuant to section 276 might be informed by any relevant provisions within section 276, including, for example, (i) the introductory “purpose” clause of section 276(b)(1) (“In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to benefit the general public”); and (ii) section 276(b)(1)(A)’s requirement that regulations adopted by the Commission ensure that payphone service providers are compensated “per call” and for “each and every completed intrastate and interstate call.”

12. Commenters are asked to identify what, if any, limits apply to Commission authority to regulate intrastate ICS rates under section 276. We note that the Commission's authority to regulate interstate ICS rates derives from both sections 276 and 201. We seek comment on whether this impacts the Commission's authority to regulate intrastate ICS rates. For instance, section 201(b) authorizes this Commission to ensure that all charges "for and in connection with" an interstate common carrier communication service are just and reasonable. Does the absence of similar language in section 276 constrain our authority to regulate intrastate ICS rates in the same manner and to the same extent as interstate ICS rates? Alternatively, by broadly defining payphone service to also include "any ancillary services," does section 276 effectively grant the Commission authority over intrastate rates that is similar in scope to authority under the "for and in connection with" provision in section 201(b)?

13. We seek comment on any sources of authority other than section 276 that would authorize the Commission to regulate intrastate ICS rates paid by end users. Does the provision of ICS – either in its current form or as it evolves to include new services and technologies – implicate the "impossibility" exception to section 2(b) of the Act, which allows a Commission regulation to preempt a state regulation when it is impossible to separate the interstate and intrastate components? Would application of this exception here give the Commission any additional authority over intrastate ICS rates beyond what is already conferred by the preemption provision in section 276(c) and the "each and every intrastate . . . call" provision in section 276(b)(1)(A)?

14. We also ask whether there are other limits on our authority to regulate intrastate ICS rates. For instance, are intrastate ICS rates, as some commenters allege, tightly bound up with issues, such as inmate discipline and prison security, that are traditionally regulated by states, localities, or prison officials and, if so, does that limit the Commission's ability to regulate intrastate ICS rates in ways that would not be applicable for interstate ICS rates? Would Commission regulation of intrastate ICS rates, or any specific elements thereof, "present[] unsettled constitutional implications under the 10th and 11th Amendments," as one commenter contends? The record reflects only limited analysis in favor of these

arguments, and we note that the proponents of these arguments have not cited any precedents that would preclude the Commission from exercising broad authority over intrastate ICS rates under section 276. Commenters should provide a complete supporting analysis and justification. We also invite comments on any other issues that may be relevant to assessing the scope of the Commission's authority to regulate intrastate ICS rates.

B. Inmate Calling Services for the Deaf and Hard of Hearing Community

15. We seek comment on four additional issues raised in our record, including: (i) whether and how to discount the per-minute rate for ICS calls placed using TTYs, (ii) whether action is required to ensure that ICS providers do not deny access to TRS by blocking calls to 711 and/or state established TRS access numbers, (iii) the need for ICS providers to receive complaints on TRS service and file reports with the Commission, and (iv) actions the Commission can take to promote the availability and use of VRS and other assistive technologies in correctional facilities.

16. Rates for TTY Calls. The record indicates that despite the fact that using TTY equipment is not the preferred form of TRS for many deaf and hard of hearing individuals, the equipment is still in widespread use in correctional facilities. Consistent with the Commission's statement in the 2012 ICS NPRM, commenters assert that TTY-to-voice calls take at least three to four times longer than voice-to-voice conversations to deliver the same conversational content, not including the time it takes to connect to the operator. Given this difference in communication speed, commenters argue that TTY users should be charged a discounted rate for TTY calls.

17. We tentatively conclude that inmate calling service per-minute rates for TTY calls should be set at 25 percent of the safe harbor rate for inmate calls. The 25 percent figure is consistent with record evidence regarding the length of a conversational call via TTY as compared to regular voice calls. We seek comment on this proposal.

18. The Commission previously has noted that section 276(b)(1)(A) specifically exempts “telecommunications relay service calls for hearing disabled individuals” from the Commission-established “per call compensation plan” ensuring that ICS providers are “fairly compensated.” No party has, to date, responded to the Commission’s request for comment on how it should take this exemption into account in examining rates. We also note that section 225(d)(1) of the Act requires the Commission to prescribe regulations that “require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day and the distance from point of origination to point of termination.” We seek comment on whether sections 276 and 225 provide sufficient authority for us to adopt a discounted rate for TTY calls.

19. We also seek comment on how ICS providers should recover the costs of providing discounted TTY calls. One proposal would be to ensure that the safe harbor per-minute rate levels are set high enough to ensure that ICS providers recover the full cost of TTY calls. Given the very small number of deaf and hard of hearing inmates relative to the overall prison population, are the safe harbor rates adopted in today’s Order sufficient to allow recovery of the discount? What are the total number of TTY minutes of use compared to the total minutes of use charged by ICS providers? If the safe harbor rates adopted today are not sufficient to recover the cost of a TTY discount, by what amount would the rate need to be increased? If the Commission adopts a tiered rate structure as discussed below or reduces the safe harbor rates adopted in the Order, what effect would this have on the ability to recover the discount?

20. We also seek comment on allowing ICS providers to recover the cost of a TTY discount from the Telecommunications Relay Service Fund. What steps would the Commission need to take to allow ICS providers to obtain certification to request payment from the Fund? What types of data would ICS providers need to submit to the Fund administrator when seeking compensation? What other steps would the Commission and the Fund administrator need to take to ensure that ICS providers are fully compensated for discounted TTY calls while protecting the TRS Fund against waste, fraud, and abuse?

21. Access to 711 and State TRS Numbers. We seek comment below on ICS call blocking practices generally. We note that commenters allege that many ICS providers block calls to toll-free numbers, including 711, which “impede[s] deaf inmates’ abilities to call a relay service provider from a TTY.” We seek specific comment on the practice of blocking calls to 711 and other TRS access numbers. Section 225 of the Act states that the Commission “shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” Does section 225 of the Act provide to the Commission an independent source of authority to prevent such blocking? What actions, if any, should the Commission take to ensure that deaf and hard of hearing inmates are able to access TRS? What methodologies exist to enable deaf inmates to reach relay services utilizing 711 and 800 numbers while blocking access to all other 800 numbers?

22. TRS Complaints and Reporting. Commenters urge the Commission to require ICS providers to collect and report to the Commission: (i) data on TRS usage via ICS, and (ii) complaints from individuals that access TRS via ICS. We seek comment on these proposals. If the Commission were to require ICS providers to submit TRS usage data, what data would be appropriate? Would the data that TRS providers submit to the TRS Fund Administrator be an appropriate model? Likewise, were the Commission to require the collection and reporting of user complaints, would the rules applicable to TRS providers serve as an appropriate model? Are the Commission’s existing consumer complaint procedures sufficient to accommodate complaints of this type? We seek comment on the benefits and burdens, including on small entities, of imposing these reporting requirements.

23. Availability of Assistive Technologies in Correctional Facilities. As discussed above, we decline to mandate the types of TRS access technologies correctional facilities must make available to inmates. We note, however, that some correctional facilities already make VRS or other types of video communication available to inmates, and seek comment on how the Commission can facilitate the availability of VRS and other forms of assistive technologies in correctional facilities. What assistive

technologies and devices should ICS providers make available? What are the advantages and disadvantages of each? Would additional assistive technologies supplant or complement TTY technology in the prison context? How can the security concerns of correctional facilities be accommodated, especially where 700/800/900 number calls or IP enabled devices are used?

24. VRS communications require the interaction of three separate yet interlinked components: VRS access technologies, video communication service, and relay service provided by ASL-fluent communications assistants (CAs). We note that in the recently adopted VRS Structural Reform Order, the Commission directed the creation of a neutral video communication service provider and a VRS access technology reference platform – key elements of VRS service that will be operated pursuant to contract with the Commission or the TRS Fund Administrator and paid for out of the TRS Fund. We seek comment on whether the availability of the neutral video communication service provider and the VRS access technology reference platform could facilitate the introduction of VRS in correctional facilities. What features or requirements, if any, would correctional facilities require the neutral video communication service provider and the VRS access technology reference platform to offer before allowing their use by inmates? Would it be possible for the administrator(s) of the neutral video communication service provider and the VRS access technology reference platform to implement such requirements or features at a reasonable cost to the TRS Fund? What other factors, such as security issues unique to correctional facilities, may serve as a barrier to the introduction of VRS and other forms of Internet-based TRS in correctional facilities?

C. Further ICS Rate Reform

25. In the Order, we adopted interim safe harbor rate levels and interim rate caps based on a conservative analysis of rate and cost data in the record. In this section, we seek comment on additional reforms including further rate reductions.

1. Rate Structure

26. We seek comment on additional reforms and alternative ways of accomplishing interstate and intrastate rate reforms including the establishment of unified interstate and intrastate rates and various suggestions for a tiered rate structure. First, we note that in the Order we make clear that the rules we adopt apply to inmate telephone service provided to the full range of “correctional institutions,” including institutions such as prisons, jails and immigration detention facilities. Beyond the guidance already provided in the order, we seek comment on whether the Commission should provide a definition in the Commission’s rules or to provide a more exhaustive list of the kinds of facilities covered. Parties that support the adoption of a definition of “correctional institution” should suggest proposed rule language and the reasons to support the inclusion or exclusion of various facilities.

27. Permanent Safe Harbors and Rate Caps. We seek comment on the methodology the Commission should use to establish cost-based permanent safe harbors and rate caps to ensure just, reasonable rates and fair compensation to providers. We seek comment on maintaining the interim rate caps and safe harbor rate levels adopted in the Order and expanding that structure to encompass intrastate ICS rates. We note that both the safe harbors and rate caps are set at conservative levels fully supported by the record but are intended to be interim in nature while the Commission further analyzes data received from the mandatory data collection adopted in the Order in order to consider whether any permanent rates should be further refined. Should we maintain the current safe harbors and make them permanent or should they be reduced over time given that they were set at conservative levels? Should they be applied to intrastate rates? Do commenters propose any specific modifications to the interim rate caps and safe harbor rate levels adopted above? For example, we seek comment below on various tiered approaches. Should any permanent safe harbor or cap be based on a tiered approach? Should we adopt a mechanism to adjust any permanent safe harbor or rate cap over time to account for changing ICS provider costs, inflation, or other factors? We invite commenters to identify factors we should consider and to detail the proposed benefits of such modifications.

28. All-Distance Rates. Some providers recommend that the Commission adopt a rate structure that charges the same rate regardless of the distance or jurisdictional nature of the call. Under such a structure, “all calls are charged at the same per-minute rate regardless of distance, call type or jurisdictional classification.” The Commission has, in other contexts, determined that the cost of calling today is distance insensitive. We seek comment on parties’ experience with distance insensitive ICS rates. Do commenters believe such a rate structure would be useful in regulating ICS rates going forward? Why or why not? We note that some facilities already have such rates. Do such rates sufficiently deal with claimed cost differences between prisons and jails of varying sizes? Commenters suggest that after reducing and standardizing all ICS rates call volumes will increase, resulting in increased revenues. Is this suggestion correct? Have other commenters experienced such a change? We seek comment on the various ICS rate structures suggested in the record. In particular, would adoption of the Petitioner’s proposed rate of \$0.07 per minute bring about the benefits of a distance-insensitive rate claimed by proponents of such an approach?

29. Tiered Rate Structure. In the Order we adopted interim safe harbor rate levels and interim rate caps that are sufficiently conservative to enable providers to recover their costs and account for any potential differing characteristics associated with providing service to varying types and sizes of facilities.

30. In the 2012 ICS NPRM, the Commission sought comment on the usefulness of a tiered rate structure based on volume of ICS minutes at the facility. 78 FR 4369, Jan. 23, 2013. In response, commenters suggested a tiered rate structure with rate levels that vary according to a facilities’ monthly volume of minutes. We again seek comment on a rate structure tiered by volume of minutes. We seek comment on whether a tiered rate structure would enable the Commission to adopt a lower rate for larger facilities. Have providers or jurisdictions adopted rate structures based on either call volume or inmate capacity? If so, what has been their experience? How do the costs of providing service differ among facilities for providers serving multiple facilities? Specifically, we seek identification of costs incurred individually by facility and what proportion of such costs make up the provider’s total cost of providing

service. We note that Securus, in response to the 2012 ICS NPRM, submitted cost data broken out by four tiers of facility size. We seek comment on the call volume based tiers used in Securus' filing. Do commenters believe division by such call volume categories is a useful way to establish a tiered rate structure? Or is this type of division too subjective or too specific to be useful for the industry as a whole?

31. If the Commission were to adopt a tiered ICS rate approach by facility size, should the Commission use the breakdown of confinement facility sizes from the Bureau of Justice Statistics? Also, commenters indicate that centralization in call processing is prevalent in the ICS industry, and that this centralization has changed the costs of providing ICS. In light of this centralization, we seek comment on whether differences in the cost to provide ICS remain between differently sized facilities. We also seek comment on whether a tiered rate structure would be more applicable to the way ICS is provided in practice if the rate tiers varied by ICS provider size rather than by facility size.

32. Tiered Rate Structure between Prisons and Jails. Some parties claim that the differences between jails and prisons in terms of such factors as size and inhabitants' length of incarceration make the cost of service vary. Others disagree. If the Commission were to adopt such a proposal, we seek comment on how to define "jails" and "prisons." Should a jail be defined as a facility where inmates are incarcerated for less than one year? If not, what is the appropriate definition of a jail? Or should the Commission define prisons and all other facilities would be considered jails? We seek comment on whether jails have different communications needs and calling practices than inmates in longer-term facilities like prisons. Commenters advocating for such a difference should explain whether such differences apply uniformly to all jails, to smaller jails, or to jails with certain characteristics. We note that the record indicates that some jails benefit from technological developments that have centralized their ICS operations and lowered the costs of providing ICS. Should we adjust our regulations and adopt different results for prisons and jails, and if so, how? What cost considerations for the provision of ICS affect jails that may not affect, or that may be different from, those that affect prisons? Instead of treating

all jails differently than prisons, should we have a tiered structure based on the size of the facility or jail? Do commenters suggesting that jails be treated differently believe that larger jails have characteristics and call volumes similar to prisons? If so, how would the Commission define “larger” jails? Should a facility be considered a “larger jail” if it has more than 100, 200, 500 or 1000 beds? Would a tiered approach, which would permit higher rates for smaller facilities, adequately address any unique needs of jails? We also seek comment on the impact of ICS provider call processing centralization for prisons and jails. Does this centralization diminish or eliminate differences between the cost to provide ICS in prisons and jails? Are there other distinctions between different types of correctional institutions that the Commission should incorporate as it considers additional rate reforms? Commenters advocating such distinctions should address the considerations noted above with respect to possible distinctions between “jails” and “prisons,” including how the different facilities should be defined, the basis for drawing the distinctions, and specifically how the distinctions should be reflected in our rules.

33. Per-Call Cap. We seek comment on whether the Commission should adopt an overall maximum per-call cap. We note that some states, for example, have created flat-rated rate structures (such as those found in New Mexico and South Carolina) with only a per-call charge, irrespective of the length of the call. Similarly, Washington, D.C. has adopted a \$1.75 per-call intrastate cap. Securus suggests that the Commission adopt an \$8.00 maximum charge for interstate ICS calls “no matter how long the call, no matter the size of the facility, and no matter the location of the originating facility.” We seek comment on whether the Commission should adopt an overall rate cap and the caps that have been adopted by states and proposed by Securus. How does such overall rate cap ensure that rates are just, reasonable, and fair? Is a per-minute rate cap also necessary to ensure that shorter calls are cost-based and reasonable?

34. Per-Call Charges. In the Order, we adopted an interim rate structure with safe harbor levels and rate caps. While we adopted per-minute rate levels to effectuate these rate structure elements, we also provided some flexibility in implementation. ICS providers electing to take advantage of the safe harbor rate levels are permitted to use a rate structure that includes per-call charges.

35. Although we permit the use of per-call charges in the Order, we express serious concerns about such charges. With the significant automation of a modern ICS network, are there any costs that are uniquely incurred during the call initiation phase that would be inappropriate, or difficult, to recover through a pure per-minute rate structure? Some states and facilities have eliminated per-call charges and are presumably able to provide full-cost recovery for ICS providers. What are the experiences of parties (facilities, ICS providers, and ICS users) where per-call charges have been eliminated? What is the experience with such rate structures and do they offer benefits that do not exist with per-minute rate structures? What is the experience for providers and users with these flat-rated rate structures given the identified risks of per-call charges in the ICS context? Are providers able to recover the costs of calls with such a rate structure? Do the benefits of leaving flexibility to the states, facilities, and ICS providers, outweigh the issues associated with per-call charges?

2. Determining Costs for ICS Rates

36. In the Order, the Commission adopted interim rate caps and safe harbor rate levels for interstate ICS. The Order also required ICS providers to file certain ICS-related data to enable the Commission to begin the process of establishing permanent rates. As part of this process, we seek comment on whether there are additional factors, including possibly declining costs related to technological innovations, that the Commission should consider in order to refine its findings in the Order and how the Commission should proceed in establishing ICS rates for interstate and intrastate ICS. Additionally, we note that the Order adopts a historical cost methodology for the interim rules and we seek comment on what measure of cost – e.g., historical, forward looking – should be adopted for the permanent rate structure.

37. Impact of Technology Innovations. The record highlights significant changes in the technology and the equipment used to provide ICS. In some facilities, Telmate offers video conferencing between inmates and their families, e-mail and voice mail services for inmates, a secure social media alternative, and a secure photo-sharing service for inmates and their families. The Virginia DOC expanded its video visitation program in 2010 and offers numerous visitor centers sites at which an

inmate's friends and family can connect through videoconferencing. We seek comment on the impact of technological advancements on the ICS industry. Have such advancements reduced the cost of providing ICS? We seek comment on specific ways in which advanced services help to address security concerns and whether such advancements reduce costs. We also invite comment on ways in which advanced services could affect access for inmates with disabilities, and communications between abled inmates and their friends and family with disabilities.

38. We seek comment on the future of voice-based services in correctional settings. In the non-ICS context, voice calling minutes have been falling while other forms of communications (*e.g.*, text messaging, email, social networks) have been growing in importance. We seek comment on the frequency of such alternatives in correctional facilities and, where applicable, the impact on ICS calling volumes. How have ICS providers introduced such alternatives while still providing adequate security capabilities, and why? We seek comment on our legal authority to regulate the rates for such alternative services.

3. International ICS

39. We seek comment on the prevalence of international calling and whether the Commission should take action to reform ICS rates for international calls. The record indicates that although it is feasible to make international calls, international ICS calling is not always an available option for inmates. Do facilities block international calls for security reasons? If so, we seek comment on what specific reasons justify blocking international calls. Several commenters assert that the lack of availability of international calling is particularly burdensome to immigrant inmates and their families. Do most facilities allow international calling? If not, why not? How are such calls priced? Are any additional restrictions applied to such calls, such as time-of-day restrictions or prior-permission requirements? Should the Commission require the availability of international calls, and what would be the source of legal authority that would authorize the Commission adopt such a requirement? If we were to adopt such a requirement, what rates should apply to international calls and how should the

Commission set such rates? We seek comment as to whether these rates are appropriate and compensatory.

D. Ancillary Charges

1. Background

40. In response to inquiries in the 2012 ICS NPRM, the record indicates that ICS providers impose charges on inmates and ICS call recipients that do not recover the costs of providing phone service but rather recover costs associated with functions ancillary to provisioning ICS such as initiating, maintaining and closing debit or prepaid ICS accounts, sending a paper bill or sending calls to a wireless number. The Order adopted requirements that such ancillary service charges related to ICS be cost-based and provides enforcement mechanisms applicable to any challenges. The Bureau released a Public Notice on June 26, 2013 seeking additional comment on these charges including: “the level of each fee, the total amount of revenue received from each fee, and the cost of providing the service for which the fee recovers.” 78 FR 42034, July 15, 2013. The record received indicates that providers are charging a variety of fees at fee levels ranging from no fee for account replenishment when a paper check is sent in the mail, to a \$7.95 processing fee for payment by credit or debit card, and \$11.95 processing fee for payment through Western Union, among others.

2. Discussion

41. In the Order, we require charges for any services that are ancillary to the costs of providing ICS to be cost-based, and require ICS providers to submit cost data for these ancillary service charges as part of the mandatory data request. Here we seek comment on how the Commission can ensure, going forward, that ancillary charges are just, reasonable, and cost-based. For example, the record reflects that ICS providers typically use third parties to process debit and prepaid transactions, and there are concerns that the charges passed on to inmates or their called parties are not entirely cost-based. Is this accurate? If so, what are the actual costs charged to the ICS providers by such third parties? We seek comment on

whether the Commission should identify certain ancillary charges that are unreasonable practices and therefore prohibited under the Act?

42. The record indicates that some ICS providers offer “no fee” options for replenishing debit or prepaid accounts. What are commenters’ experiences with such options? We request that commenters describe any other no- or low-fee options offered by ICS providers. Should the Commission mandate that ICS providers offer such no or low fee options? We seek comment on this approach, including our legal authority to mandate a no or low fee option.

43. Likewise, we seek comment on the cost drivers underlying ICS providers’ ancillary service charges. Are charges for these services currently cost-based? Will our complaint process ensure that charges for services that are ancillary to the telecommunications costs of providing ICS are cost-based on an ongoing basis? Do commenters believe that the costs underlying ancillary service charges should be treated as compensable though ICS rates? Can we set a safe harbor rate that will ensure that charges for such ancillary services are cost-based? How would such a safe harbor work? If we set such a safe harbor, what kind of process should be available to ICS providers that believe they cannot recover their costs for such ancillary services? What information should we require the ICS providers to submit to support such requests?

44. Finally, we seek comment on whether some ancillary services charges constitute unjust and unreasonable practices, in violation of section 201(b), or a practice that would lead to unfair rates in violation of section 276, regardless of the level of the charge, because how such charges are imposed make ICS too expensive and thus unavailable to some consumers. The Commission has consistently held that practices may be unjust and unreasonable without regard to the charges related to those practices. Examples of practices that we believe may be unjust and unreasonable to the extent they impose de minimis costs to the ICS provider include imposing inactivity charges on a customer’s prepaid account, and charging a customer to close an account and refund their money to them. We seek comment on whether we should consider these charges, or any other ancillary service charges, to be unjust and unreasonable.

E. Prohibiting Call Blocking

1. Background

45. The Commission has a long-standing policy that largely prohibits call blocking. Specifically, the Commission has determined that the refusal to deliver voice telephone calls “risks degradation of the country’s telecommunications network” and poses a serious threat to the “ubiquity and seamlessness” of the network. The issue of call blocking has arisen in multiple contexts in the ICS industry. Throughout this proceeding ICS providers have offered various justifications for their call blocking practices. Here we seek additional comment on these practices which break down into two fundamental types. We invite commenters to address any other types of blocking and we seek comment on whether we need to address blocking beyond the two specific types described below.

2. Billing-Related Call Blocking

46. The Commission sought information in the 2012 ICS NPRM on billing-related call blocking. 78 FR 4369, Jan. 23, 2013. In the Order above we conclude that billing-related call blocking of interstate ICS calls is only permissible if the ICS provider offers a “prepaid collect” option, as described above. We seek comment on whether our conclusion resolves the issues surrounding billing-related blocking of interstate ICS calls. Additionally, we seek comment on whether we should extend our prohibition on blocking to intrastate ICS calls. In particular, we invite comment on whether it is possible to block only interstate calls while not blocking intrastate calls, or whether such a separation is impracticable. In light of our mandate above for “prepaid collect,” do the problems Petitioners describe remain? Or is it correct, as commenters have said, that such “products help to ensure that inmates reach their intended parties regardless of their billing status”? Does our mandate regarding “prepaid collect” options address ICS providers’ problems of uncollectibles? What other options are there to prevent call blocking due to a lack of a billing relationship between the ICS provider and the called parties’ provider, whether ILEC, CLEC, wireless provider or VoIP provider? Should we prohibit ICS providers from entering into a new contract or contract extension for ICS that include collect calling-only requirements unless they offer an

alternative prepaid collect calling option? What would be our authority for doing so? We also seek comment on whether our mandate should apply only to interstate collect-only calling, or whether it should also apply to intrastate collect-only calling. Can the two be separated? Under what authority could we mandate a prepaid collect calling option for intrastate ICS?

47. Finally, one ICS provider suggests that the best way to deal with billing-related call blocking is to encourage the use of prepaid or debit ICS accounts. We seek comment on the usefulness and ubiquity of debit and prepaid calling in correctional facilities and whether we should mandate that ICS providers offer such services. Under what authority can we mandate provision of such services?

3. Non-Geographically Based Telephone Number Call Blocking

48. Consumers today can and do obtain telephone numbers that do not reflect their geographic location. In the ICS context, doing so may enable consumers to be charged a lower rate depending on the differences among local, intrastate long distance, and interstate long distance rates. The Commission sought comment on this practice in the 2012 ICS NPRM. Given the Commission precedent largely prohibiting call blocking, with limited exceptions, we seek comment on whether any types of ICS call blocking may be necessary or appropriate, particularly in relation to non-geographically based telephone numbers. If such blocking is necessary, how can this need be reconciled with Commission precedent? To the extent that commenters assert that blocking occurs to address security concerns, we seek comment on the reason and frequency of such blocking. We seek comment on whether there are any additional concerns that could justify blocking outgoing ICS calls to non-geographically based telephone numbers. Given the Commission's policy against unreasonable call blocking, we are skeptical of the need for call blocking and seek alternatives to blocking that maintain the ubiquity of the national telecommunications network while balancing security needs.

F. Exclusive ICS Contracts

49. We conclude in the Order that competition does not effectively constrain rates for interstate ICS to ensure that such rates are just, reasonable, and fair. While the Commission found that there is

competition among ICS providers to provide service to correctional facilities, it concluded that there is not sufficient competition within facilities to ensure that rates are just and reasonable to end users because of exclusive contract arrangements. We seek comment in this section on whether we should encourage competition within correctional facilities to reduce rates.

50. We generally seek comment on whether there are ways to foster competition to constrain rates to just, reasonable, and fair levels within correctional facilities. When the Commission previously sought comment on allowing multiple providers to serve correctional facilities, correctional facilities and ICS providers generally opposed the allowance of multiple providers because of security concerns. What has changed, if anything, in the last decade that may allow for competition among ICS providers within a single facility? If commenters believe that security concerns still provide a reason for not allowing multiple ICS providers within a facility, we seek comment on what the specific concerns are. For example, could a facility have uniform security requirements that would apply to any provider offering service in the facility? What are the advantages and disadvantages of such an approach? In its comments, Verizon states that allowing multiple ICS providers to serve inmates at a correctional facility could promote competition among ICS providers. Verizon also raises the question of whether the security concerns justifying exclusive contracts have been superseded by any technological advances. Do technological advances change the equation? If so, could we expect in the future to rely on competition to ensure just, reasonable, and fair ICS rates for inmates and ICS providers? Are there rules or requirements the Commission could adopt to facilitate such a transition? We seek comment on these issues and the Commission's authority to adopt rules and requirements to facilitate such a transition.

G. Quality of Service

51. In the Order, we observe that, given our conservative safe harbor and rate cap scheme, quality of service should not be negatively impacted by the ICS rates we adopt, and we further encourage continued innovation and efficiencies to improve quality of service. Here, we seek comment on whether it is necessary for the Commission to develop minimum federal quality of service standards that would

apply to all facilities. For example, ICE set forth national detention standards, which established requirements for effective communication, sufficient access, and daily maintenance. Under these standards, facilities must maintain at least a 25 to 1 ratio of detainees to operable telephones. Do prison and jail facilities currently have similar rules or regulations in place to secure the quality of inmate calling services? Have states adopted any regulations of this sort? We seek comment on whether national standards are necessary. Should we establish rules regarding the quality of inmate phone calls, the number of phones in a facility, or the maintenance of telephones? If adoption of such national standards would be beneficial, under what authority could the Commission adopt such rules? We also seek comment on whether we should require ICS providers to include the ratio of telephones to inmates per facility in their annual certification filings. Commenters advocating for such an approach should specify the Commission's legal authority to adopt their proposals.

H. Cost/Benefit Analysis of Proposals

52. Acknowledging the potential difficulty of quantifying costs and benefits, we seek to determine whether each of the proposals above will provide public benefits that outweigh their costs, and we seek to maximize the net benefits to the public from any proposals we adopt. For example, commenters have argued that inmate recidivism is decreased with regular family contact. Accordingly, we seek specific comment on the costs and benefits of the proposals above and any additional proposals received in response to this FNPRM. We also seek any information or analysis that would help us to quantify these costs or benefits. Further, we seek comment on any considerations regarding the manner in which the proposals could be implemented that would increase the number of people who benefit from them, or otherwise increase their net public benefit. We request that interested parties discuss whether, how and by how much they will be impacted in terms of costs and benefits of the proposals included herein. We recognize that the costs and benefits may vary based on such factors as the correctional facility served and ICS provider. We request that parties file specific analyses and facts to support any claims of significant costs or benefits associated with the proposals herein.

II. PROCEDURAL MATTERS

A. Filing Instructions

53. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments and reply comments on this FNPRM must be filed in WC Docket No. 12-375.

- Electronic Filers: Direct cases and other pleadings may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

B. Ex Parte Requirements

54. The proceeding this FNPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with sec. 1.1206(b). In proceedings governed by sec. 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

C. Paperwork Reduction Act Analysis

55. This FNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

D. Congressional Review Act

56. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *See* 5 U.S.C. 801(a)(1)(A).

E. Initial Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this FNPRM, of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on or before the dates indicated on the first page of this FNPRM. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

1. Need for, and Objectives of, the Notice

58. In today's Order, the Commission adopted rules to ensure that rates for interstate calling at correctional institutions are just and reasonable, and to that end, established calling rates for interstate inmate calling services (ICS). This FNPRM seeks comment on additional measures the Commission could take to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest, the Commission's authority to implement these measures, and the pros and cons of each measure.

The Commission believes that additional action on ICS will help maintain familial contacts stressed by confinement and will better serve inmates with special needs while still ensuring the critical security needs of correctional facilities of various sizes. Specifically, the FNPRM seeks comment on:

- Reforming intrastate ICS rates and practices;
- ICS for the deaf and hard of hearing community;
- Further reforms of interstate and intrastate ICS rates;
- Cost recovery in connection with the provision of ICS;
- Ensuring that charges ancillary to the provision of ICS are cost-based;
- ICS call blocking;
- Ways to foster competition to reduce rates within correctional facilities; and
- Quality of service for ICS.

2. Legal Basis

59. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i)-(j), 201(b) and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(j), 201(b) and 276.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

62. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

63. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by our action.

64. Incumbent Local Exchange Carriers (incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

65. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

66. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, 70 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by our action.

67. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies

reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

68. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

69. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

70. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by our action.

71. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

72. In this FNPRM, the Commission seeks public comment on options to reform the inmate calling service market. Possible new rules could affect all ICS providers, including small entities. In proposing these reforms, the Commission seeks comment on various options discussed and additional options for reforming the ICS market.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

73. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

74. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to

the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM. In addition, the Commission seeks updated data, as described in the FNPRM, from small entities that may be impacted by Commission action on ICS.

75. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. Specifically, the Commission will conduct a cost/benefit analysis as part of this FNPRM and consider the public benefits of any such requirements it might adopt, to ensure that they outweigh their impacts on small businesses.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

76. None.

III. ORDERING CLAUSES

77. Accordingly, it is ordered that pursuant to sections 1, 4(i), 4(j), 201, 225, 276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 201, 225, 276, 303(r), the Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 12-375 ARE ADOPTED.

78. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,

Secretary.

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